Syllabus

Israel and international law - 62383

Last update 30-09-2017

HU Credits: 3

Responsible Department: law

Academic year: 0

Semester: 1st Semester

Teaching Languages: English

Campus: Mt. ScopusMt. Scopus

Course/Module Coordinator: Talila Devir

Coordinator Email: talila.devir@mail.huji.ac.il

Coordinator Office Hours: By appointment only.

Teaching Staff:
Prof Yuval Shany
Prof Malcolm Shaw
Prof Guy Harpaz
Ms. Talila Devir

Course/Module description:

The course introduces the normative structure and theoretical foundations of Public International Law (PIL), alongside its institutional and procedural aspects. It also looks at the interplay between PIL and domestic legal systems, and between PIL and international relations, legal philosophy and political science.

A particular focus of the course is the relevance of PIL to the issues and challenges confronting the State of Israel. The State of Israel came into existence with the support of a UN Resolution (General Assembly Resolution 181 of 29 Nov. 1947) and has engaged extensively in several PIL instruments and arrangements. At the same time, much of the international criticism directed against Israel pertains to the conformity of its laws and policies with its obligations under PIL. The course shall therefore discuss some core issues in PIL and their significance to the State of Israel, in light and based upon the unique needs and history of Israel.

Course/Module aims:

Learning about PIL in general, and through the unique perspective of the State of Israel and its experience in the international realm.

Learning outcomes - On successful completion of this module, students should be able to:

Students will be able to define and analyze the role of international law, and will acquire knowledge and be able to analyze central topics in contemporary international law, most specifically relating to the State of Israel.

Attendance requirements(%):

75%

Teaching arrangement and method of instruction: Students are required to view all classes that will be available on-line. In addition, students are expected to read the items assigned to each class in the reading list below, to submit weekly assignments based on their class viewing and the materials read, and to actively participate in the forum discussion moderated by Ms. Talila Devir, the course administrator.

Course/Module Content:

The course consists of four parts: the first part of the course will deal with the history of PIL, its normative foundations and the theoretical basis for compliance

with its norms. The second part of the course will discuss some of the main actors and institutions that operate in the international sphere. The third part of the course will present selected issues in PIL: Acquisition of Territory under International Law, The Prohibition against the Use of Force, The Laws of International Humanitarian Law, The Laws of Occupation, International Human Rights Law, International Criminal Law, Universal jurisdiction and the ICC, International Economic Law and International Environmental Law. The fourth part of the course will offer a closer look into issues relating to PIL and Israel, including: Status of International Law under Israeli Law, The creation of the State of Israel and the Status of Palestine, The Status of Jerusalem and the Territories seized by Israel, The Middle East Peace Process, Israel's Wars under International Law, Israel's Asymmetric Armed Conflicts, Israel's immigration law and policy, Israel and International Criminal Law, Israel's Relations with Trade Blocks.

Required Reading:
Two main books will be used during the course:
1. Malcolm N. Shaw, International Law (7nd. Ed., 2014) ("Shaw").
2. James Crawford, Brownlie's Principles of Public International Law (8th ed., 2012) ("Crawford").

Part I: Introduction to PIL
1. The Nature of PIL
Shaw, 1-8, 31-48.
Further reading (optional): David Kennedy, "International Law and the Nineteenth Century: History of an illusion", 17 Quinnipiac L. Rev. 99 (1997).
Further reading (optional): Hercules Booysen, "Is International Law Relinquishing its Exclusively Public Law Nature?", 4 Tulsa J. Comp. & Int'l L. 219 (1997).

2. Historical development of PIL
Shaw, 9-22.
S.S. "Lotus" (Fr. v. Turk.), (1927) P.C.I.J. (Ser. A) No. 10, p. 10-12, 16-20.
Further reading (optional): Antony Anghie, "The Evolution of International Law: Colonial and Postcolonial Realities", 27 Third World Quarterly 739 (2006).

3. Theory of PIL - Why do States comply
Samantha Besson and John Tasioulas, Introduction, in The Philosophy of International Law (Besson and Tasioulas, eds., 2010) p. 1-19.
Moshe Hirsch, Compliance with International Norms in the Age of Globalization: Two Theoretical Perspectives, in The Impact of International Law on International Cooperation (Eyal Benvenisti and Moshe Hirsch, eds., Cambridge University Press, 2004), pp. 166-193.
Further reading (optional): Martti Koskenniemi, "The Politics of International Law", 1 European Journal of International Law 4 (1990), p. 4-13.

4. Sources of PIL

Shaw, 49-91, 654-693.
Statute of the International Court of Justice, June 26, 1945, 1 U.N.T.S. 993, articles 38, 59.
Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331 (1969), articles 1-3, 6-7, 11, 19-21, 24, 26-32, 39-40, 42, 48-64.
Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), (1986) I.C.J. 14, paras. 172-186.
Further reading (optional): Asylum (Colom./Peru), Judgment, (1950) I.C.J. 266, p. 276-278.
Further reading (optional): North Sea Continental Shelf (Fed. Rep. Ger./Den.; Fed. Rep. Ger./Neth.), Judgment, (1969) I.C.J. 3, paras. 70-81.
Further reading (optional): M. Cherif Bassiouni, "A Functional Approach to 'General Principles of International Law'", 11 Mich. J. Int'l L. 768 (1990).
Further reading (optional): Julian D. Mortenson, "The Travaux of Travaux: Is the Vienna Convention Hostile to Drafting History?", 107 AJIL 780 (2013).
Further reading (optional): Rosalyn Higgins, Problems and Process: International Law and How We Use It (1994), chapter 12 - The Role of National Courts in the International Legal Process.

5. The relation between PIL and domestic law
Shaw, 92-142.
Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331 (1969), articles 27, 46.
Articles on Responsibility of States for Internationally Wrongful Acts, A/56/83 (2001), article 3.
Further reading (optional): General Commentary on the ILC Articles on Responsibility of States for Internationally Wrongful Acts, 92, Report of the ILC on the work of its fifty-third session, A/CN.4/SER.A/2001/Add.1 (Part 2) (2001), commentaries to article 3 (p. 36-38).
Further reading (optional): Crawford, Part I(3): The Relations of International Law and National Law.

Part II: PIL Institutions and Actors
6. The State
Shaw, 142-178, 183-188.
Convention on the Rights and Duties of States (Montevideo Convention) (1933), 165 L.N.T.S. 19, article 1.
ICC, Office of the Prosecutor, Update on the Situation in Palestine, 3 April 2012.
ICC Press Release. The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine, 16 Jan. 2015.
Further reading (optional): Jurisdictional Immunities of the State (Ger. v. It.: Greece intervening), Judgment, 2012 I.C.J. 99, paras. 20-38, 62-63, 78-80, 91-94, 96-98, 101-104, 107-110, 119-121, 131-139.
Further reading (optional): Thomas D. Grant, "Defining Statehood: The Montevideo Convention and its Discontents", 37 Colum. J. Transnat'l L. 403 (1999).

Further reading (optional): Michael Shane French-Merrill, "The Role of the United Nations and Recognition in Sovereignty Determinations: How Australia Breached its International Obligations in Ratifying the Timor Gap Treaty", 8 Cardozo J. Int'l & Comp. L. 285 (2000).
Further reading (optional): Crawford, Part II(5) Creation and Incidence of Statehood; Part II(6) Recognition of States and Governments.

7. State responsibility
Shaw, 566-612.
Articles on Responsibility of States for Internationally Wrongful Acts, A/56/83 (2001).
Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb.), Merits, Judgment, 2007 I.C.J. 43. paras. 425-450.
Further reading (optional): General Commentary on the ILC Articles on Responsibility of States for Internationally Wrongful Acts, 92, Report of the ILC on the work of its fifty-third session, A/CN.4/SER.A/2001/Add.1 (Part 2) (2001), commentaries to articles 4-11, 20-25.
Further reading (optional): Davis B. Tyner, "Correcting the International Criminal Tribunal for the Former Yugoslavia's Folly in Tadic", 18 Fla. J. Int'l L. 843 (2006).
Further reading (optional): Crawford, Part IX(25) The conditions for international responsibility; Crawford, Part IX(25) Consequences of an Internationally Wrongful Act.

8. Immunities:
Shaw, p. 506-565.
United Nations Convention on Jurisdiction Immunities of States and their Property, 2004, UN Doc. Doc. A/59/508.
Jurisdictional Immunities of the State (Ger. v. It.: Greece intervening), Judgment, 2012 I.C.J. 99, paras. 92-97.
PLA 7092/94, Her Majesty the Queen in Right of Canada v. Sheldon G. Edelson, tak-Supreme 97(2) (Supreme Court of Israel), paras. 1, 5-12, 15-16, 21-35.
Further reading (optional): Elena Sciso, "Foreign State Immunity at Home and Abroad: Italian Judges' Point of View on Foreign States' Immunity", 44 Vand. J. Transnat'l L. 1201 (2011).
Further reading (optional): David P. Stewart, "The Immunity of State Officials under the UN Convention on Jurisdictional Immunities of States and Their Property", 44 Vand. J. Transnat'l L. 1047 (2011).

9. International Organisations
Shaw, p. 875-931.
Charter of the United Nations, 1 U.N.T.S. XVI (1945), articles 1-2, 4, 7, 10-12, 18, 23-25, 33, 39-51, 57, 61-63.
Further reading (optional): Guy Harpaz, "Normative Power Europe and The Problem of a Legitimacy Deficit: An Israeli Perspective", 12 European Foreign Affairs Review 89 (2007).
Further reading (optional): Bruno Simma, From Bilateralism to Community

Interest in International Law, in Collected Courses of the Academy of International Law, Vol. 250, 1994.
Further reading (optional): Guy Harpaz, "Judicial Review by the European Court of Justice of UN "Smart Sanctions" against Terror in the Kadi Dispute", 14 EFAR 65 (2009).
Further reading (optional): Giuseppe Mancini, "The Making of a Constitution for Europe", 26 Common Market Law Review 595 (1989).
Further reading (optional): Amitai Etzioni, "The Community Deficit",45.1 Journal of Common Market Studies 23 (2007).
Further reading (optional): Helen Sjursen, "Why Expand?: The Question of Legitimacy and justification in the EUs Enlargement Policy", 40.3 Journal of Common market Studies 491 (2002).

10. The Pacific Settlement of Disputes
Shaw, 732-765.
Charter of the United Nations, 1 U.N.T.S. XVI (1945), articles 1-2, 25, 33, 39-51.
Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marsh. Is. v. Pak.), I.C.J., Judgment of 5 October 2016, paras.25-40.
Further reading (optional): Statute of the International Court of Justice, June 26, 1945, 1 U.N.T.S. 993, articles 34-38, 40, 59-62, 65.
Further reading (optional): United Nations, Handbook on the Peaceful Settlement of Disputes Between States (New York, 1992).

Part III: Main PIL Regimes
11. Acquisition of Territory under International Law
Shaw, 352-400.
Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States, U.N. Doc. A/5217 (1970).
Further reading (optional): Timothy W Waters, "The Blessing of Departure: Acceptable and Unacceptable State Support for Demographic Transformation: The Lieberman Plan to Exchange Populated Territories in Cisjordan", 2.1 Law and Ethics of Human Rights 1 (2008).
Further reading (optional): Yuval Shany, "Redrawing Maps, Manipulating Demographics: On Exchange of Populated Territories and Self-Determination", 2.1 Law and Ethics of Human Rights 286 (2008).
Further reading (optional): Catriona Drew, "The East Timor Story: International Law on Trial", 12 European Journal of International Law 651 (2001).
Further reading (optional): Declaration of the Granting of Independence to Colonial Countries and Peoples, U.N. Doc. A/4684 (1960).
Further reading (optional): Western Sahara, Advisory Opinion, (1975) I.C.J. 12, paras. 48-65, 70-72.
Further reading (optional): Legal Status of Eastern Greenland (Den. v. Nor.), 1933 P.C.I.J. (ser. A/B) No. 43 (Apr. 5).

12. The Prohibition Against the Use of Force

Shaw, 811-846.
Dinstein Y., War, Aggression and Self-Defence (5th ed., 2011), chapter 3.
Charter of the United Nations, 1 U.N.T.S. XVI (1945), articles 2, 33-51.
General Assembly Resolution 3314 of 14 December 1974.
Oil Platforms (Iran v. U.S.), Judgment, 2003 I.C.J. 161, paras. 73-77.
Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, 43 ILM 1009, paras.138-142.
Report of the High-Level Panel on Threats, Challenges and Change, A More Secure World: Our Shared Responsibility (A/59/565, 2 December 2004), paras. 199-209.
Further reading (optional): Security Council Resolution 1701 of 11 August 2006.
Further reading (optional): Security Council Resolution 1860 of 20 March 2008.
Further reading (optional): Security Council Resolution 1973 of 17 March 2011.
Further reading (optional): Leila Nadya Sadat, "Presidential Powers and Foreign Affairs: Rendition and Targeted Killings of Americans: America's Drone Wars", 45 Case W. Res. J. Int'l L. 197 (2012).
Further reading (optional): Matthew C. Cooper, "A Note to States Defending Humanitarian Intervention: Examining Viable Arguments before the International Court of Justice", 40 Denv. J. Int'l L. & Pol'y 167 (2012).
Further reading (optional): Michael N. Schmitt, "The Law of Cyber Warfare: Quo Vadis?", 25 Stan. L. & Pol'y Rev 269 (2014).
Further reading (optional): Thomas M. Franck, Recourse to Force: State Action against Threats and Armed Attacks (2002) Ch. 10.

13. International Humanitarian Law
Shaw, 847-875.
Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 187 Consol. T.S. 227 (Hague 1907), para.8 to the preamble, articles 2-25, 43.
Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, 75 U.N.T.S. 135, articles 1-7, 13, 17, 24, 118, 129, 130.
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 8 June 1977, 1125 U.N.T.S. 3, articles 1, 20, 35-37, 43, 44, 48-55, 57-58, 65, 83, 85.
Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, (1996) I.C.J. Rep 226, paras. 74-87.
Further reading (optional): Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign against the Federal Republic of Yugoslavia, 39 I.L.M.1257 (2000).
Further reading (optional): David Kretzmer, "Exploring the Need for Additional Norms to Govern Contemporary Conflict Situation: Rethinking the Application of IHL in Non-International Armed Conflicts", 42 Isr. L. Rev. 8 (2009).
Further reading (optional): Cordula Droege, The Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict, 40 Isr. L. Rev. 2 (2007).
Further reading (optional): T. Meron, "The Humanization of Humanitarian Law", 94 AJIL 239 (2000).

Further reading (optional): J. Henckaerts & L. Doswald-Beck, Customary International Humanitarian Law (2006), introduction.

14. The Laws of Occupation
Yoram Dinstein, The International Law of Belligerent Occupation (2009), p. 31-67.
Guy Harpaz and Yuval Shany, "The Israel Supreme Court and the Incremental Expansion of the Scope of Discretion under Belligerent Occupation Law", 43.3 Isr. L. Rev. 514 (2010).
Yuval Shany, "Faraway, So Close: The Legal Status of Gaza after Israel's Disengagement", 8 Yearbook Int'l Human. L. 369 (2005).
Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 187 Consol. T.S. 227 (Hague 1907), articles 42-43, 53-55.
Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, 75 U.N.T.S. 287, articles 5, 8, 27, 31, 33, 34, 49, 146, 147.

Further reading (optional): Yuval Shany, "Binary Law Meets Complex Reality: The Occupation of Gaza Debate", 41 Isr. L. Rev. 68 (2008).
Further reading (optional): Yuval Shany, "Capacities and Inadequacies: A Look at the Two Separation Barrier Cases", 38 Isr. L. Rev. 230 (2005).
Further reading (optional): Yuval Shany, "Head Against the Wall? Israel's Rejection of the Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories", 17 Yearbook Int'l Human. L. 352 (2004).
Further reading (optional): David Kretzmer, The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories (2002), Ch. 2.
Further reading (optional): Eyal Benvenisti, The International Law of Occupation (1993), Ch. 2-3.

15. International Human Rights Law
Shaw, 194-248.
Universal Declaration of Human Rights, G.A. Res. 217(III), 71 UN GAOR Supp. (No.13), UN Doc. A/810 (1948), preamble and articles 3-11.
International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (1966), articles 1-2, 4, 6, 7, 9, 14, 19.
International Covenant on Economic, Social, and Cultural Rights, 993 U.N.T.S. 3 (1966), articles 1-2, 5.
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. Doc. A/39/51 (1984), articles 1-5, 16.
Human Rights Committee, General Comment 29, U.N. Doc. CCPR/C/21/Rev.1/Add.1 (2001).
Further reading (optional): Al-Skeini v. United Kingdom, App. No. 55721/07 Eur. Ct. H.R., 50 ILM 995 (2011).
Further reading (optional): Kiobel v. Royal Dutch Petroleum Co., Supreme Court of the United States No. 10-1491 (2013).
Further reading (optional): Samantha Miko, "Al-Skeini v. United Kingdom and Extraterritorial Jurisdiction under the European Convention for Human Rights", 35

B.C. INT'L & COMP. L. REV. 63 (2013).
Further reading (optional): David Kennedy, "The International Human Rights Movement: Part of the Problem?", 15 Harv. Hum. Rts. J. 101 (2002).
Further reading (optional): Nigel S. Rodley, "The Prohibition of Torture: Absolute Means Absolute", 34 Denv. J. Int'l L. & Pol'y 145 (2006)

16. International Criminal Law
Shaw, 285-321.
Rome Statute of the International Criminal Court, July 17, 1998, U.N. Doc. A/CONF.183/9, articles 1, 5-8, 11-21.
Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Belg.), ICJ Judgment of 14 Feb. 2002, Joint Separate Opinions of Higgins, Kooijmans and Buergenthal, paras. 40-65.
Further reading (optional): Attorney-General v. Eichmann, 36 ILR 5, 298 (S.C. 1961)(Isr.).
Further reading (optional): P. Clarke, "Hybridity, Holism and "Traditional" Justice: The Case of the Gacaca Courts in Post-Genocide Rwanda", 39 George Washington International Law Review 765 (2007).
Further reading (optional): Kieran McEvoy, "Beyond Legalism: Towards a Thicker Understanding of Transitional Justice", 34 Journal of Law and Society 411 (2007).
Further reading (optional): Douglas Sheehan, "The Backdoor to the ICC: Jurisdiction Over Dual Nationals and the Shadow of the Court", 17 New Eng. J. Int'l & Comp. L. 347 (2011).
Further reading (optional): Lucy Martinez, "Prosecuting Terrorists at the International Criminal Court: Possibilities and Problems", 34 Rutgers L. J. 1 (2002).
Further reading (optional): Robert Cryer, Hakan Friman, Darryl Robinson & Elizabeth Wilmshurst, An introduction to International Criminal Law and Procedure (2007), part 1.

17. International Economic Law
Michael Trebilcock & Robert Howse, The Regulation of International Trade (4th ed., 2013), p. 1-54.
David Palmeter and Petros C. Mavroidis, The WTO Legal System: Sources of Law, 92.3 American Journal of International Law 398 (1998).
General Agreement on Tariffs and Trade (GATT), Articles I, III, VI, XI, XX, XXI.
Further reading (optional): Joost Pauwelyn The Role of Public International Law in the WTO: How Far Can We Go?, 95 American Journal of International Law 535 (2001).
Further reading (optional): Joseph Weiler, The Rule of Lawyers and the Ethos of Diplomats: Reflections on the Internal and External Legitimacy of WTO Dispute Settlement, 35.2 Journal of World Trade 191 (2001).
Further reading (optional): Simon Lester, "The Role of the International Trade Regime in Global Governance", 16 UCLA J. Int'l L. & For. Aff. 209 (2011).

18. International Environmental Law
Shaw, 613-653.

Bodansky, Daniel. "Chapter 1: What is International Environmental Law?" The Art and Craft of International Environmental Law. Harvard University press 2010: 1-17.
Further reading (optional): Declaration of the United Nations Conference on the Human Environment, adopted June 16, 1972, U.N. Doc. A/CONF.48/14, reprinted in 11 I.L.M. 1416 (1972).
Further reading (optional): Rio Declaration on Environment and Development, adopted June 14, 1992, U.N. Doc. A/CONF.151/5/Rev. 1 (1992).
Further reading (optional): Neil Craik, "Recalcitrant Reality and Chosen Ideals: The Public Function of Dispute Settlement in International Environmental Law", 10 Geo. Int'l Envtl. L. Rev. 551 (1998).
Surya P. Subedi, "Balancing International Trade with Environmental Protection". 25 Brooklyn Journal of International Law 373 (1999).

Part IV: A deeper look into Israel and PIL
19. Status of International Law under Israeli Law
20. Israel: Recognized borders and territorial disputes
Yuval Shany, "Legal Entitlements, Changing Circumstances and Inter-temporality" (the article was uploaded to the website of the course).
21. Israel's Asymmetric Armed Conflicts
22. Israel's immigration law and policy
HCJ 7146/12 Adam v Knesset, Judgment of 16 Sept. 2013, paras. 66-69, 91-93, 106-115 (per Arbel J).
23. Israel and International Criminal Law
24. Israel's Relations with Trade Blocks

Additional Reading Material:
As elaborated above

Course/Module evaluation:
End of year written/oral examination 65 %
Presentation 0 %
Participation in Tutorials 5 %
Project work 0 %
Assignments 30 %
Reports 0 %
Research project 0 %
Quizzes 0 %
Other 0 %

Additional information: